

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6618
BILL NUMBER: SB 355

NOTE PREPARED: Dec 18, 2010
BILL AMENDED:

SUBJECT: Smoking Ban.

FIRST AUTHOR: Sen. Broden
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: *Smoking Prohibition:* The bill prohibits smoking: (1) in public places; (2) in enclosed areas of a place of employment; (3) in certain state vehicles; and (4) within 12 feet of a public entrance to a public place or an enclosed area of a place of employment.

Enforcement: It requires the Alcohol and Tobacco Commission to enforce this prohibition.

Infractions: It makes it a Class B infraction to violate the smoking prohibition and a Class A infraction if the person has three prior unrelated judgments for violations.

Employment: The bill also prohibits firing or refusing to hire a person for reporting a violation or exercising any right or performing any obligation under the smoking prohibitions.

Repeal: It repeals the current Clean Indoor Air Law that prohibits smoking in public buildings.

Effective Date: July 1, 2011.

Summary of NET State Impact: *Gaming Tax Revenue:* The smoking prohibition is estimated to reduce revenue from the riverboat wagering tax, riverboat admission tax, and slot machine wagering tax. The smoking prohibition also is estimated to increase payments to replace shortages in riverboat admission tax distributions to local units and state agencies. The potential impact of the smoking prohibition on tax revenue from parimutuel wagering at racetracks and off-track betting facilities, charity gaming, and Type II gaming at bars and taverns is unknown. The table below summarizes the estimated net impact to the state from reduced collections of taxes on the riverboat casinos and racinos as a result of the smoking prohibition.

	Fund	FY 2012	FY 2013
Gaming Taxes	General Fund	(\$94.8 M - \$186.5 M)	(\$94.8 M - \$186.5 M)
Admission Tax Replacement	General Fund	\$0.0	(\$2.3 M - \$4.5 M)
Gaming Taxes	Other Funds	(\$0.5 M - \$1.2 M)	(\$0.5 M - \$1.2 M)
Total		(\$95.3 M - \$187.7 M)	(\$97.6 M - \$192.2 M)

The revenue loss estimates are based on the December 15, 2009, Revenue Technical Committee forecast of (1) FY 2011 adjusted gross receipts (AGR) from gaming at the state's riverboat casinos and racinos; and (2) FY 2011 attendance at the riverboat casinos. The lower bound estimates assume attendance reductions of 5% and AGR reductions of 10%. The higher bound estimates assume attendance reductions of 10% and AGR reductions of 20%.

Explanation of State Expenditures: Summary- The bill will do the following:

(1) Increase payments from the state General Fund to local units, the Division of Mental Health, and the State Fair Commission for riverboat admission tax replacement by \$2.3 M to \$4.5 M annually beginning in FY 2013.

(2) Increase costs for the Indiana Alcohol and Tobacco Commission (ATC) to enforce the smoking ban. The increased costs will vary depending on how ATC implements its enforcement responsibility. Also, revenues for the state General Fund could increase through infraction judgements for two Class B infractions (or Class A infractions under certain circumstances) established under the bill.

Background Information- *Riverboat Admission Tax Replacement Payments:* Reductions in riverboat admission tax collections due to the smoking prohibition would increase annual payments made from the state General Fund to offset shortages in admission tax distributions to certain local units, the Division of Mental Health, and the State Fair Commission. Under current statute, local units, the Division of Mental Health, and the State Fair Commission, which receive admission tax revenue from the riverboat casinos (excluding the French Lick Casino), are annually guaranteed to receive an amount of revenue equal to the distribution amount received in FY 2002. If the distribution received in a fiscal year is less than the FY 2002 distribution amount, the local unit or state agency receives a payment equal to the shortage from the state General Fund by September 15th of the following fiscal year. Since the smoking prohibition would begin in FY 2012, the impact on replacement payments would begin in FY 2013. (Note: The admission tax guarantee does not apply to local units or state agencies receiving admission tax revenue from the French Lick Casino.)

Enforcement: Under current law, the Clean Indoor Air Law is under the sections of the Indiana Code concerning the State Department of Health (ISDH). Enforcement of the statute is not assigned, meaning that it is enforced by law enforcement officers. Under the bill, the ATC would have enforcement responsibility. Also, the Department of Health, a local health department, and the Division of Fire and Building Safety may enforce the prohibition.

The ATC currently has authority for enforcing the "sale of cigarette" provisions in the public places that would be part of the smoking ban in the bill. The bill prohibits smoking in all public places, and the ATC would have responsibility to enforce the smoking ban in places that the ATC does not currently monitor. As

a result, the ATC will need to increase staffing to address this new responsibility. However, there are no data available to estimate the number of public places where enforcement will occur. The ATC could enforce the new smoking ban with its own enforcement agents or delegate enforcement to other specified agencies including the Department of Health, local health departments, and the Division of Fire and Building Safety. (Under IC 34-28-5, all law enforcement officers have authority to enforce infractions.) Also, the ATC could actively enforce the smoking ban or choose to only investigate complaints received. These management decisions will determine the additional staffing requirements.

The appropriation for the ATC for enforcement and administration in FY 2011 is \$10.4 M. The ATC is funded with dedicated funds from tobacco and alcohol excise taxes. As of August 2, 2010, there were 96 employees with total salaries of \$4.7 M assigned to the Excise Police Enforcement Section (EPES) of the ATC. The average annual salary of employees of the EPES is \$49,397, and average salaries range from \$22,386 to \$78,000.

Explanation of State Revenues: *Gaming Tax Revenue:* The smoking prohibition would apply to: (1) pari-mutuel horse racetracks; (2) off-track betting facilities; (3) facilities where charitable gaming is conducted; (3) riverboat casinos; and (4) racinos. The smoking prohibition also would apply to bars and taverns conducting Type II gaming. The table below summarizes the estimated state revenue loss from taxes imposed on the riverboat casinos and racinos as a result of the smoking prohibition.

Tax	Annual Revenue Loss
Riverboat Wagering Tax	\$80.3 M -\$158.5 M
Riverboat Admission Tax	\$0.6 M - \$1.4 M
Slot Machine Wagering Tax	\$14.4 M - \$27.8 M
Total	\$95.3 M - \$187.7 M

The table below summarizes the estimated state revenue loss by affected fund or agency as a result of the smoking prohibition.

Fund/Agency Affected	Annual Revenue Loss
General Fund	\$94.8 M -\$186.5 M
West Baden Historic Hotel Preservation and Maintenance Fund	\$0.5 M - \$1.1 M
Indiana Economic Development Corporation	\$40,000- \$79,000
Total	\$95.3 M - \$187.7 M

The potential impact of the smoking prohibition on tax revenue from parimutuel wagering at racetracks and off-track betting facilities, charity gaming, and Type II gaming at bars and taverns is unknown. Any reductions in these revenue sources would affect the state General Fund, the Build Indiana Fund, the Livestock Industry Promotion and Development Fund, and the State Fair Commission. In FY 2010, the parimutuel taxes generated \$3.8 M, the charity gaming excise tax generated \$1.25 M, and the Type II gaming excise tax generated \$354,145.

Infractions: There are no data available to indicate how many offenders may be found guilty of prohibited

smoking, a Class B infraction, or how many owners, managers, or operators of public places or places of employment may fail to comply with the provisions of the act, a Class B infraction. Both of these offenses may be enhanced to a Class A infraction if the offender has three prior, unrelated convictions. If additional court cases occur and infraction judgments and court fees are collected, revenue to the state General Fund may increase. The maximum judgment for a Class B infraction is \$1,000, and the maximum judgment for a Class A infraction is \$10,000. Judgments are deposited in the state General Fund.

If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), the public defense administration fee (\$3), the court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

Employment: A violation concerning firing or refusing to hire a person for reporting a violation or exercising any right or obligation under the smoking prohibition is a Class B misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class B misdemeanor is \$1,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Enforcement:* Local health departments could incur additional costs to inspect premises to detect violation of the prohibition. The ATC, however, is responsible for enforcement of the ban.

Employment: A Class B misdemeanor is punishable by up to 180 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Gaming Tax Revenue:* The smoking prohibition is estimated to reduce distributions to certain local units from the riverboat wagering tax, the riverboat admission tax, the county slot machine wagering tax, and the supplemental slot machine wagering tax. The reduction could total \$5.5 M to \$12.6 M, annually. The potential local revenue losses from riverboat taxes beginning in FY 2012 are described in the table below.

Riverboat Casino Taxes	Annual Revenue Loss	
Recipients	Wagering Tax	Admission Tax
Michigan City	\$1.3 M - \$2.4 M	-
Rising Sun	\$0.5 M - \$1.4 M	-
Gary	\$0.8 M - \$2.5 M	-
Orange County	\$0.3 M - \$0.5 M	\$38,000 - \$76,000
Orleans	\$0.1 M - \$0.3 M	\$9,000 - \$17,000
Paoli	\$0.1 M - \$0.3 M	\$9,000 - \$17,000
French Lick	\$0.2 M - \$0.5 M	\$17,000 - \$34,000
West Baden Springs	\$0.2 M - \$0.5 M	\$17,000 - \$34,000
Orange County Dev. Commission	\$0.2 M - \$0.5 M	\$17,000 - \$34,000
Total	\$3.7 M - \$8.9 M	\$0.1 M - \$0.2 M

The potential local revenue losses from slot machine taxes beginning in FY 2012 are described in the table below.

Slot Machine Taxes	Annual Revenue Loss	
Recipients	County Tax	Supplemental Tax
Madison County	\$0.6 M - \$1.2 M	-
Shelby County	\$0.7 M - \$1.4 M	-
French Lick Casino	-	\$0.4 M - \$0.9 M
Total	\$1.3 M - \$2.6 M	\$0.4 M - \$0.9 M

A local unit that is a docksite for a riverboat casino (other than local units receiving wagering tax revenue from the French Lick Casino) receives 25% of the wagering tax generated by the riverboat casino up to a maximum of the distribution amount the local unit received in FY 2002. In the case of the riverboat casinos in Gary, Michigan City, and Rising Sun, wagering tax revenue is estimated to decline under one or both scenarios by an amount sufficient that the 25% share is less than the cap amount.

The local units receiving wagering tax revenue and admission tax revenue from the French Lick Casino, and wagering tax revenue from the racinos, all receive a fixed percentage of this revenue. Therefore, the AGR and attendance declines due to the smoking prohibition would reduce the revenue to these local units.

Infractions and Employment: If additional court actions are filed and a judgment is entered or guilty verdict is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$70 or the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: ATC; ISDH; Division of Fire and Building Safety.

Local Agencies Affected: Trial courts; local law enforcement agencies; local departments of health.

Information Sources: Revenue Technical Committee Forecast, December 15, 2009. Legislative Services Agency, *Smoking Ban Impacts on Gaming Revenue*, August 20, 2009 (memo presented to the Gaming Study Committee on August 14, 2009). Mandel, L, B. Alamar, and S. Glantz. "Smoke-Free Law Did Not Affect Revenue from Gaming in Delaware." *Tobacco Control*, vol. 14 (February 2005), pp. 10-12. Glantz, S. And B. Alamar. "Erratum to Mandel, L.L., Alamar, B.C., and Glantz, S.A.. 'Smoke-free Law Did Not Affect Revenue from Gaming in Delaware.' *Tobacco Control*, vol. 14 (February 2005), pp. 10-12." *Tobacco Control On-Line (Electronic Letters)*, May 23, 2005. Pakko, M. "Smoke-free Law Did Affect Revenue from Gaming in Delaware." *Tobacco Control*, vol. 15 (February 2006), pp. 68-69. Pakko, M. "No Smoking at the Slot Machines: The Effect of a Smoke-Free Law on Delaware Gaming Revenues." *Applied Economics*, vol. 40 (July-August 2008), pp. 1769-74. Thalheimer, R. and M. Ali. "The Demand for Casino Gaming with Special Reference to a Smoking Bank." *Economic Inquiry*, vol. 46 (April 2008), pp. 273-282. Lal, A. And M. Siahpush. "The Effect of Smoke-Free Policies on Electronic Gaming Machine Expenditure in Victoria, Australia." *Journal of Epidemiology and Community Health*, vol. 62 (January 2008), pp. 11-15. Garrett, T. And M. Pakko. "Casino Revenue and the Illinois Smoking Ban." Working Paper 2009-027A & 2009-027B, Research Division, Federal Reserve Bank of St. Louis, Working Paper Series, <http://research.stlouisfed.org/wp/2009/2009-027.pdf>.

Fiscal Analyst: Jim Landers, 317-232-9869; Karen Firestone, 317-234-2106.